

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1549 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BPUPENDRA CHANDULAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioners
Mr. M.R.Anand, GOVERNMENT PLEADER with Kamal Mehta
A.G.P.for Respondent No. 1 and 2
SERVED for Respondent No. 3
MR JAYANT PATEL for Respondent No. 4

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT

Date of decision: 07/08/96

ORAL JUDGEMENT(Per:Pandit.J)

Bhupendra Chandulal Patel and Harshad Chandulal Patel of Broach have filed the present application under article 226 of the Constitution of India in order to challenge the acquisition proceedings taken in order to acquire their bungalow situated in City Survey No. 3205 ward no.1, plot no. 134 within the municipal limits of Broach city.

2. The petitioners have come before the court with a case that the acquisition is bad as it would amount to second acquisition by the Government for one and the same land. This petition is filed in March 1984 and it seems that during the pendency of this proceedings, another land of survey no. 2515 is acquired by the respondent no.1 for respondent no.4 and therefore, the petitioners have filed an additional affidavit on 10.10.95 bringing on record the fact that the respondents have acquired the land of survey no. 2515 for the purpose of respondent no.4.

3. The claim of the petitioners is resisted by the respondents nos 1 and 4 by contending that the acquisition in question could not be said to be bad. It is contended by the respondent no.1 that in the acquisition in question, the respondent no.1 is acquiring only the bungalow of the petitioners, second acquisition could not be said to be illegal. Respondent no.4 has contended that the acquisition in question is for a public purpose and it is in need of the public at large. Respondent no. 4 has admitted the fact that the new land has been acquired as claimed by the petitioners of survey number 2515 but it is contended that said land which has been given in possession of the respondent no.4 is not sufficient for the respondent no.4 and therefore, the need of getting the petitioners' bungalow is still in existence.

4. Before considering the rival contentions it is necessary to mention certain admitted facts which are on record. The petitioners' were members of Pritam Co-operative Housing Society. Land of survey no. 3205 was acquired by the Government for the purpose of the said Co.op.Housing Society in the year 1949. In the said land, said Pritam Nagar Co.op.Housing Society had laid various plots and one of the plots was given to the petitioners' father and in the said plot of land, the petitioners' father had built bungalow no. 134. Said bungalow was given on lease by the father of the petitioners to respondent no.4 on account of his financial difficulties. The petitioners had filed a suit on 5.11.82. But before that in the year 1977 the

petitioners' father had offered to sell the said bungalow to the respondent no.4 for an amount of Rs. 60,000/- and the said offer was not accepted by the respondent no.4. In the year 1982 the petitioners who were residing in a rented premises were in need of the said bungalow for their personal use and occupation and therefore, they filed a suit under the Bombay Rent Control Act for their personal bonafide requirement. After filing of the said suit acquisition proceedings under section 4 of the Land Acquisition Act was initiated on 29.10.82. But unfortunately, for the petitioners, their suit was dismissed on 5.11.82 on the ground that as the respondent no.4 was a Government, suit under the Bombay Rent Control Act was not tenable. Thereafter, Notification under section 6 was issued on 21.10.83 and hence the petitioners have come to this court.

5. Ms. Mehta has vehemently urged before us that the acquisition is a malafide acquisition and she has also contended before us that the acquisition of the said land on the second occasion is not tenable in law. She also contended before us that the question is of malafide acquisition and she has also contended before us that the acquisition of the said land on the second occasion again is not tenable in law. She also contended before us that in view of the admitted position that the land of survey number 2515 is acquired for the purpose of respondent no.4, the need for acquisition is not subsisting and in the circumstances the petition should be allowed. In view of the admitted fact that the land of survey number 2515 has been acquired for respondent no.4 and the respondent no.4 was given possession of the said land and that respondent no.4 has also raised certain constructions on the said land, we think that it is not necessary for us to go into the two contentions raised by petitioner, namely (1) whether the acquisition in question is malafide and (2) whether the acquisition of the same land on the second occasion is illegal. Mrs. Mehta also contended before us that the acquisition in question is merely acquisition of the building in a co-operative society and the same could not be done in law. Therefore, without expressing any opinion said contention of Mrs. Mehta we proceed to consider only the contention that there is no need of acquisition in question.

6. The petitioner had filed additional affidavit on 10.10.95 bringing on record that the land of survey no. 2515 measuring 4580 sq.mtrs. has been acquired by the Notification dated 25.1.83. Respondent no.4 has filed

his additional affidavit and the respondent no.1 has also filed affidavit after filing of the said additional affidavit by the petitioner. In the affidavit in reply filed by respondent no.1, the averment made by the petitioners that the land admeasuring 4580 sq.mtrs.. out of survey number 2515 has been acquired by the Notification dated 25.1.83, has not been specifically denied. No doubt the executive engineer of respondent no.4 has stated in his affidavit that the land of only 1081.8 sq.mtrs. has been acquired. The executive engineer of respondent not. 4 has further stated in his affidavit that though the said land is acquired, the purpose in getting the property in question acquired still survives. According to him after acquiring of the said land, they have raised a building but they cannot make use of whole of the land in view of the fact that high tension 132 KV electric line is passing through the middle of the said plot. It is contended before us by Mr. Patel that shifting of the office from the building of the petitioner to the new building is only temporary but that claim of the respondent no.4 could not be believed in view of the office order issued by the respondent no.4 which has been produced by the petitioner on record. Said order runs as under:

" Government of India .

Central Water Commission,

Lower Narmada Sub Division,

Near Rural Police Head
Quarters. Maktampur Road,
Bharuch,
Pin Code 392 002.

Office Order

The Office of the Assistant Engineer, Lower Narmada Sub Division, Central Water Commission, Bharuch which was functioning in the private building bearing Bungalow No. 134, Pritam Society No.2, Bharuch 392 002 (Gujarat) has been shifted to Departmental building of Central Water Commission Near Rural Police Head Quarters, Maktampur Road, Bharuch 392 002.

All the confidential deal official letters and other correspondence may please made to the New Address as detatiled below in future:

New Office Address

C/o the Assistant Engineer,
Lower Narmada Sub Division,
Central Water Commission,
Near Rural Police Head Quarter,
Maktampur Road, Bharuch 392 002

Sd/-

(S.K.Mishra)

Assistant Engineer, Lower
Narmada Sub Div. C.W.C. Bharuch.

Copy for kind information and necessary
Action to

xxx

The Special Land Acqu.Officer Bharuch. "

The above order issued by the office of the respondent no.4 itself shows that they have shifted to the new building in the newly acquired property. It is nowhere mentioned in the said order that they have temporarily shifted to the new building and it is also very pertinent to note that respondent no.1 and 2 do not support the respondent no.4 in this respect. Respondent no.2 has stated in para 4 of the affidavit as under:

" I say that it is true that originally the land was acquired for a society and out of that the society constructed bungalows and out of the said bungalows the petitioners have given one bungalow on rent to the Central Flood Control Room. I say that originally the land was acquired was vacant land whereas the subsequent proceedings were carried out in connection with bungalow in which the office of the respondent no.4 was situated. I say that original acquisition pertains to the land in question whereas the 2nd acquisition pertains to the bungalow in question. I say that by acquiring the bungalow in question there is no violation of the provisions of the Land Acquisition Act. I say that on the outskirts of Narmada River the Government has decided to protect the property of the people and for that for making clear forecasting of rain, the Government has decided to have a technical officer and a site is provided for flood forecasting station and separate land is also acquired and for that acquisition 43/82 was initiated and completed and the bigger land has

been given for the purpose of the respondent no.4"

6. Respondent no.2 is the acquiring authority. Respondent no.2 has acquired the said land for the purpose of respondent no.4 and when respondent no.2 clearly states in the affidavit that they have acquired bigger land for the purpose of respondent no.4, the contention raised by Mr. Patel that the land which has been given under new acquisition is not sufficient could not be believed and accepted. Thus in view of the documentary evidence produced by the petitioner and the affidavit filed by both respondent no.2 and respondent no.4 it is clear that the purpose of acquiring the property in question does not survive today. When the purpose of acquisition is not surviving today, the Notifications issued for acquiring the property will have to be quashed and set aside only on this ground, without expressing any view as regards other contention raised by the petitioner. We, therefore, quash and set aside the Notifications issued under sections 4 and 6 of the Land Acquisition Act at Annexures A and B respectively dated 29.10.82 and 21.10.83 . Thus we allow this petition but we direct the parties to bear their own costs. Rule made absolute.

(N.J.Pandya.J)

(S.D.Pandit.J)